

JPA File No. JPA 06-109 **0383**
A.G. Contract No. KR07-~~0380~~TRN
Project: Interstate 10 (I-10) Widening
Section: Sarival Avenue to SR 101L
TRACS No. **H7096 01C (Median Widening)**
H7296 01C (Outside Widening)
Budget Source: **Sarival Ave-Dysart Rd 43408**
Dysart Rd to SR101L 43508
Sarival Ave-Dysart Rd 43409

ACCELERATION AGREEMENT
AMONG
THE STATE OF ARIZONA,
THE MARICOPA ASSOCIATION OF GOVERNMENTS,
THE CITY OF AVONDALE,
THE CITY OF GOODYEAR
AND
THE CITY OF LITCHFIELD PARK

THIS AGREEMENT is entered into October 11, 2007 pursuant to Arizona Revised Statutes Sections 11-951 through 11-954 and Section 28-7010, as amended, between the STATE OF ARIZONA, acting by and through its DEPARTMENT OF TRANSPORTATION (the "State"), the MARICOPA ASSOCIATION OF GOVERNMENTS, acting by and through its REGIONAL COUNCIL ("MAG"), the CITY OF AVONDALE, acting by and through its CITY COUNCIL ("Avondale"), the CITY OF GOODYEAR acting by and through its CITY COUNCIL, ("Goodyear") and the CITY OF LITCHFIELD PARK, acting by and through its CITY COUNCIL ("Litchfield Park").

I. DEFINITIONS

"Accelerated Construction Schedule" means the construction of the Project as set forth in Exhibit A, attached hereto and made a part hereof.

"Agreement" means this Acceleration Agreement for the Project, as the same may be amended or supplemented from time to time.

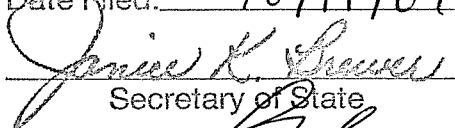
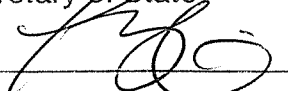
"Business Day" means any day on which municipal and State offices are open for business.

"Cities" means Avondale, Goodyear and Litchfield Park, collectively.

"Construction Discount Rate" means 6%, which is the rate for fiscal year 2008, determined pursuant to the Life Cycle Certification for the Regional Transportation Plan Freeway Program (RTPFP).

"Department" means the Arizona Department of Transportation.

"Final Construction Plans" means the approved 100% plans submitted by the design consultant.

NO. 29305
Filed with the Secretary of State
Date Filed: 10/11/07

Secretary of State
By: 

"GAN" or "GANs" means one or more series of the Grant Anticipation Notes issued by the State Transportation Board pursuant to Arizona Revised Statutes, Title 28, Chapter 21, Article 3, for the purpose of paying for or reimbursing the acceleration of construction of the Project.

"GAN Proceeds Account" means the account established in the financing documents for the GAN containing proceeds derived from the issuance of the GAN and other amounts, to be used to pay construction costs of the Project and GAN Issuance Costs.

"Grant Agreement" means the written agreement between the Department and the United States of America or any of its departments or agencies by which the Department will receive grants to construct the Project or reimburse the Department for monies spent with respect to the Project.

"GAN Issuance Costs" means all reasonable legal and financial costs and expenses incurred to issue and administer the GAN.

"I-10" means Interstate Highway 10.

"Parties" means the State, MAG, Avondale, Goodyear and Litchfield Park, collectively.

"Plans" means design plans, specifications and other documents necessary for bidding and building the Project.

"Project" means the construction of two elements of the RTPFP to widen portions of I-10 as follows:

Element 1 – I-10 Median widening:

Construct one general-purpose lane (GPL) and one HOV lane in each direction in the I-10 median, beginning 1,700-feet east of Sarival Avenue and continuing to the I-10/SR101L traffic interchange in two segments, (1) Sarival Avenue to Dysart Road and (2) Dysart Road to the SR 101L interchange. Construction would begin in FY 2008, rather than FY 2011 and 2014 as programmed in the RTPFP; and

Element 2 – I-10, Outside widening:

Construct one general-purpose lane in each direction outside of the existing I-10 mainlines, beginning 1,700-feet east of Sarival Avenue and continuing to Dysart Road. Construction would begin in FY 2009 rather than FY 2011 as programmed in the RTPFP.

"Project Cost" means the total aggregate amount of the construction costs of the Project (Element 1 and Element 2).

"Project Programmed Funds" means the funds approved by the State Transportation Board and the Maricopa Association of Governments in the RTPFP, designated for the Project.

"RTPFP" means the Regional Transportation Plan Freeway Program.

"STAN" means the Statewide Transportation Acceleration Needs account established pursuant to Arizona Revised Statutes Section 28-7009.

"State's Fiscal Year" means the fiscal year, which begins on July 1st and ends on June 30th of the following year.

"State Standards" means, unless otherwise agreed to by the Parties to this Agreement, Department guidelines, specifications, rules and regulations as of the date of this Agreement for the design and construction of the Project.

"State Transportation Board" means the Transportation Board of the State organized pursuant to Arizona Revised Statutes, Sections 28-301 and following.

"TAIR" means the Transportation Acceleration Interest Reimbursement account established in 2007 as a subaccount of STAN pursuant to Arizona Revised Statutes Sections 28-7010.

II. RECITALS

1. The State is empowered by Arizona Revised Statutes, Sections 28-401 and 28-7010 to enter into this Agreement and has authorized the undersigned to execute this Agreement on behalf of the State.

2. MAG is empowered by Arizona Revised Statutes Section 28-7010 to enter into this Agreement and has approved this Agreement and has authorized the undersigned to execute this Agreement on behalf of MAG.

3. Avondale is empowered by Arizona Revised Statutes Section 48-572 and City Charter Article I, Section 3 to enter into this Agreement and has by resolution, a copy of which is attached hereto and made a part hereof, resolved to enter into this Agreement and has authorized the undersigned to execute this Agreement on behalf of Avondale.

4. Goodyear is empowered by Arizona Revised Statutes Section 48-572 and City Charter Article I, Section 3 to enter into this Agreement and has by resolution, a copy of which is attached hereto as and made a part hereof, resolved to enter into this Agreement and has authorized the undersigned to execute this Agreement on behalf of Goodyear.

5. Litchfield Park is empowered by Arizona Revised Statutes Section 48-572 to enter into this Agreement and has by resolution, a copy of which is attached hereto and made a part hereof, resolved to enter into this Agreement and has authorized the undersigned to execute this Agreement on behalf of Litchfield Park.

6. On April 4, 2006, the City/Town Councils from Avondale, Buckeye, Goodyear and Litchfield Park each adopted a resolution committing to work with each other and to cause their respective staff members to prepare for consideration by their respective City Councils an intergovernmental agreement (IGA) establishing the sources of revenue and the terms and conditions by which each participant would pay a portion of the Acceleration Costs of the Project, authorizing Goodyear to act as fiscal agent for other southwest valley cities and towns (Avondale, Buckeye, Litchfield Park) and providing for a sunset of any future committed local funds.

7. In May 2006 the MAG Regional Council approved accelerating the design and construction of I-10. Under the current fiscal year (FY) 2008-2026 Life Cycle Program, the Project has been advanced according to the following schedule:

	Original	Accelerated
• Element One: Sarival Avenue to Dysart Road (HOV & GPL Inside Lane)	FY 2011	FY 2008
• Dysart Road to SR 101L (HOV & GPL - Inside Lane)	FY 2014	FY 2008
• Element Two: Sarival Avenue to Dysart Road (GPL Outside Lane)	FY 2011	FY 2009

8. The total construction cost of the Project (Elements One and Two) is currently estimated to be approximately \$153,000,000.00.

9. On August 28, 2006, the Goodyear City Council adopted an IGA between the Cities of Avondale, Goodyear and Litchfield Park to jointly share in the interest costs associated with accelerating the design of widening I-10 from Sarival Avenue to SR 101L (the "Design IGA"). The Design IGA was subsequently adopted by the Litchfield Park City Council on September 6, 2006 and by the Avondale City Council on September 25, 2006. The Town of Buckeye did not participate in the Design IGA.

10. The State Transportation Board has the authority, pursuant to Title 28, Chapter, 21, Article 3 of the Arizona Revised Statutes, to issue GANs to accelerate the Project, and the Cities have requested that the State Transportation Board issue said GANs for the purposes of payment and reimbursing the major

portion of the construction costs for the Project. The total amount of GANs to be issued with respect to the Project is currently estimated to be approximately \$136,000,000.00, based on the estimated total construction cost and estimated GAN Issuance Costs.

11. The Cities desire to advance the construction of the Project, to begin construction in or around January 2008 and be completed in accordance with the schedule shown on Exhibit A.

12. The State, MAG and the Cities agree it is in the best interest of the public to advance the construction of the Project as set forth in Exhibit A. The State agrees to use funds from the GANs, issued by the State Transportation Board, for the purpose of paying for or reimbursing the construction of the Project. The Cities will agree to pay a portion of the interest on the GANs and the GAN Issuance Costs, subject to the terms and conditions set forth below.

13. MAG has established a process for review and approval of interest cost reimbursement from STAN, and at the September 6, 2007 meeting of the MAG Regional Council (a) the Project was approved as eligible for interest cost reimbursement in an amount equal to (i) the lesser of \$7 Million plus the amount of the 2007 Federal Contribution, if any, or the Cities' actual interest cost responsibility (as determined pursuant to IV(b)(i) below) to be credited against the Cities' obligation to pay interest to the State as set forth in IV(b)(i) below and (ii) in an amount equal to \$3 Million to be allocated to the Regional Freeway Program for the Project and (b) MAG recommend to the State Transportation Board that the amount necessary for such interest cost reimbursement be so allocated.

14. Avondale and Litchfield Park are pursuing up to \$500,000 of federal funding from monies not otherwise allocated to Arizona and considered to be discretionary ("above the line") funds, to pay a portion of the interest costs related to the Project (the "2007 Federal Contribution"). As of the date of this Agreement, the 2007 Federal Contribution is earmarked in Senate Bill 1789 and House Bill 3074 as "I-10 improvements, Western Maricopa County, AZ". The State, MAG and the Cities agree that the 2007 Federal Contribution, however amended prior to appropriation, is intended to pay a portion of the Cities' interest obligations in connection with the Project. The Cities shall be responsible for all matching funds necessary to obtain the Federal Contribution. These matching funds are not eligible for TAIR reimbursement.

15. The Parties hereto agree to and acknowledge the following conditions: (a) The Project as referenced shall be considered all-encompassing, therefore, if the Cities agree to go forward with Element One of the Project, it is understood Element Two will follow accordingly; (b) The estimated monetary amounts referenced in this Agreement are subject to change and can change substantially before completion of the Project; (c) The Parties shall perform their responsibilities consistent with this Agreement; and (d) Any change or modification to the Project will only occur with the mutual written consent of the Parties.

NOW, THEREFORE, in consideration of the conditions expressed herein, it is agreed as follows:

III. RESPONSIBILITIES OF THE PARTIES

1. The State shall:

a. Provide the final Project Plans that have been completed in accordance with the Accelerated Construction Schedule set forth in Exhibit A and provide Goodyear with copies of the final Project Plans for review and comment by the Cities.

b. Provide, to State standards, the design plans, specifications and such other documents and services necessary for the bidding of the construction phase of the Project. Project features requested by the Cities in excess of the State standards will be added to the Project only upon the Cities' prior written agreement to pay any additional design, construction and administrative costs incurred by the State as direct result of the Cities' requested features and approval by the State. If fewer than all of the Cities request such excess features, then such requesting City or Cities shall be solely responsible to enter into such written agreement with the State for any additional design and construction costs. All enhancements requested by local governments to be included in the Project, shall be paid by said local government.

c. Have the right to cancel this Agreement at the final design submittal for Element One if the Project's estimated amount for Element One exceeds \$101,000,000.00 or the combined total for Element One and Element Two exceeds \$153,000,000.00.

d. Use its best efforts to (i) open bids for the construction of Element One according to the schedule set forth in Exhibit A; (ii) recommend to the State Transportation Board that it award one or more construction contracts for the Project; and (iii) administer the construction of the Project and make all payments to the contractor.

e. Use its best efforts to issue to the contractor a notice to proceed within 5-business days of award of the construction contract by the State Transportation Board according to the schedule set forth in Exhibit A, but no later than Spring 2008.

f. Provide Goodyear with final construction cost estimates, and an estimate following receipt of construction bids by the State, but prior to award.

g. Assume all operation and maintenance of the Project upon completion, except as may be agreed to under separate intergovernmental or joint project agreements.

2. Goodyear shall:

a. Act as the "Fiscal Agent" on behalf of the Cities for the Project.

b. Act as the liaison to the State, MAG and other entities on behalf of the Cities for Project.

c. Provide progress reports to Avondale and Litchfield Park as they are received from the State.

d. Use its best efforts to review and provide comments on the final Plans within 10-business days of Goodyear's receipt of the Plans from the State. Goodyear shall provide such Plans to Avondale and Litchfield Park within one business day of receipt of same from the State.

e. Be responsible for costs of any additional Project features requested by Goodyear in excess of state standards conditional upon approval by the State.

f. Have the right to review the final construction cost estimate on behalf of the Cities and cancel this Agreement, subject to III(2)(g) below, if the estimated amount (including 14% contingency and construction engineering) for Element One exceeds \$101,000,000.00 at the final design submittal. Such notice of cancellation shall be in writing and within 10-business days of Goodyear's receipt of said estimate. If Goodyear rejects the final estimate and cancels this Agreement, the State Transportation

Board will not issue the GANs. Under such circumstance, the construction of the Project will be completed in accordance with the MAG Area Life Cycle Construction Program for FY 2011-2016.

g. Present the final construction cost estimate, when received by Goodyear pursuant to III(2)(f) above, to Avondale and Litchfield Park for review and comment not later than one business day after receipt from the State. As soon as possible after review of the final construction cost estimate by all Cities, but in no event later than seven business days after receipt of same by Goodyear from the State, the Cities shall meet and confer with respect to the final construction cost estimate for Element One. If the final construction cost estimate exceeds \$101,000,000.00, the Cities shall jointly determine whether the Project should continue. If the Cities do not unanimously agree to continue forward with construction, then Goodyear shall have the option to (i) move forward with construction; provided, however, that (1) this Agreement shall terminate with respect to any Cities that have not agreed to continue forward with the construction and (2) Goodyear shall assume the percentage share, as set forth below, of any Cities electing to not continue forward or (ii) cancel this Agreement; provided, however, that if Avondale desires to continue with the construction in Goodyear's absence, (1) this Agreement shall terminate with respect to any Cities that have not agreed to continue forward with the construction, (2) Goodyear shall take all necessary steps to transfer its duties as Fiscal Agent to Avondale and (3) Avondale shall assume the percentage share, as set forth in IV below, of any Cities electing to not continue forward.

h. Have the right to review bids received and cancel this Agreement on behalf of the Cities following the State's advertisement, subject to III(2)(i) below, if the bid amount for Element One, plus 14% construction engineering and contingency, exceeds \$101,000,000.00. Such notice of cancellation shall be in writing and within 10-business days of Goodyear's receipt of the bids from the State. If Goodyear cancels this Agreement prior to award of the bid, the State Transportation Board will not issue the GANs. Under such circumstance, the construction of the Project will be completed in accordance with the MAG Area Life Cycle Construction Program for FY 2011-2016. In the event of cancellation by the Cities prior to award of the bid, the Cities shall jointly be responsible for all costs incurred by the State up to the time of cancellation.

i. Present the Project bids, when received by Goodyear pursuant to III(2)(h) above, to Avondale and Litchfield Park for review and comment not later than one business day after receipt from the State. As soon as possible after review of the Project bids by all Cities, but in no event later than seven business days after receipt of same by Goodyear from the State, the Cities shall meet and confer with respect to the construction. If the Project bids exceed \$101,000,000.00, the Cities shall jointly determine whether the Project should continue. If the Cities do not unanimously agree to continue forward with the construction, then Goodyear shall have the option to (i) move forward with construction; provided, however, that (1) this Agreement shall terminate with respect to any Cities that have not agreed to continue forward with the construction and (2) Goodyear shall assume the percentage share, as set forth in IV below, of any Cities electing to not continue forward or (ii) cancel this Agreement; provided, however, that if Avondale desires to continue with the construction in Goodyear's absence, (1) this Agreement shall terminate with respect to any Cities that have not agreed to continue forward with the construction, (2) Goodyear shall take all necessary steps to transfer its Fiscal Agent duties to Avondale and (3) Avondale shall assume the percentage share, as set forth in IV below, of any Parties electing to not continue forward.

j. Be responsible for its respective share of the interest payments and GAN Issuance Costs due to the State as provided in IV(b)(i) herein, until the GANs are paid in full with Project Programmed Funds or federal aid reimbursement, whichever comes first.

k. Be responsible to pay its respective share of all interest charges, administrative and engineering costs paid by the State to advance the Project if the Cities terminate this Agreement.

3. Avondale shall:

a. Use its best efforts to review and provide comments on the final Plans within seven business days of Goodyear's receipt of the Plans from the State.

b. Be responsible for costs of any additional Project features requested by Avondale in excess of state standards conditional upon approval by the State.

c. Have the right to review the final construction cost estimate as set forth in III(2)(g) above.

d. Have the right to review bids received as set forth in III(2)(i) above.

e. Be responsible for its respective share of interest payments and GAN Issuance Costs due to the State as provided in IV(b)(i) herein, until the GANs are paid in full with Project Programmed Funds or federal aid reimbursement, whichever comes first.

f. Be responsible to pay its respective share of all interest charges, administrative and engineering costs paid by the State to advance the Project if the Cities terminate this Agreement.

4. Litchfield Park shall:

a. Use its best efforts to review and provide comments on the final Plans within seven business days of the Goodyear's receipt of the Plans from the State.

b. Be responsible for costs of any additional Project features requested by Litchfield Park in excess of state standards conditional upon approval by the State.

c. Have the right to review the final construction cost estimate as set forth in III(2)(g) above.

d. Have the right to review bids received as set forth in III(2)(i) above.

e. Be responsible for its respective share of interest payments and GAN Issuance Costs due to the State as provided in IV(b)(i) herein, until the GANs are paid in full with Project Programmed Funds or federal aid reimbursement, whichever comes first.

f. Subject to the limitations set forth in IV(f) below, be responsible to pay its respective share of all interest charges, administrative and engineering costs paid by the State to advance the Project if the Cities terminate this Agreement.

IV. PROJECT FINANCING

a. The State agrees to (i) recommend to the State Transportation Board to issue GANs in an aggregate principal amount that is sufficient to provide funds in the amounts and at the times necessary to fully fund the Project construction; however, the State Transportation Board will not issue the GANs without the prior execution of the Grant Agreement(s) and (ii) to deposit the 2007 Federal Contribution, or any subsequent contribution similarly earmarked for this Project, into the TAIR for the benefit of paying a portion of the Cities' interest obligation, as set forth below.

b. The Cities agree to pay interest and the GAN Issuance Costs to the State as follows:

i. Interest calculated on the outstanding amount of the GANs issued with respect to the Project, minus contributions from MAG according to the MAG Highway Acceleration Policy, adopted March 22, 2000 (the "Acceleration Policy"), from the dates of issuance of the GANs until the GANs are paid in full with Project Programmed Funds. The interest rate on such calculation is equal to the true interest cost ("TIC") on the GANs, less one-half the Construction Discount Rate for fiscal year 2008, as determined pursuant to the Life Cycle Certification for the Regional Transportation Plan Freeway Program dated July 31, 2006. Such interest shall be computed on the basis of a year comprised on 360 days consisting of 12 months of 30 days. The GAN Issuance Costs shall be prorated over 48 equal installments and included in monthly invoices or until the issuance costs are paid in full. The State shall submit an invoice to Goodyear for such interest and prorated GAN Issuance Costs thirty (30) calendar days prior to the interest due date on the GANs; and payment of the invoice is due to the State ten (10)

calendar days prior to the interest due date on the GANs. The interest payments and GAN Issuance Costs due pursuant to this section shall be divided as follows: Avondale – 38.5%; Goodyear – 58.5%; and Litchfield Park – 3.0%. The GAN Issuance Costs shall not be reimbursed from the TAIR account.

ii. After issuance of the GANs, the obligations of the Cities to pay interest as provided in IV(b)(i) shall survive the Cities termination of this Agreement if this Agreement is terminated by (A) the Cities without cause or (B) the State for the Cities' substantial material default, after notice and reasonable opportunity to cure. If this Agreement is terminated at any time by the State for any reason other than the Cities' substantial material default, any obligations of the Cities to pay interest as provided in IV(b)(i) shall be deemed fully satisfied.

c. Interest on the GAN Proceeds Accounts shall accrue and shall be paid in accordance with the GAN resolution passed by the State Transportation Board.

d. MAG agrees (i) to recommend to the State Transportation Board that an amount equal to the lesser of \$7 Million or the Cities' actual interest cost responsibility be deposited into a sub-account of the TAIR account for the purpose of paying the interest on the GANs to satisfy the Cities' interest payment obligations as set forth in IV(b)(i) above, in accordance with the provisions of IV(e) below, (ii) in addition to its obligations under the Acceleration Policy, to apply the \$3 Million allocated to the Regional Freeway Program described in Recital 13 above to its interest obligations related to the GANs issued for the Project and (iii) to ensure that, for the entire period that the Cities are obligated to pay interest as set forth in IV(b)(i) above, the Project interest payments are allocated among the Cities and MAG according to the MAG Acceleration Policy.

e. The Cities agree that, upon approval by the State Transportation Board and deposit of the \$7 Million into the TAIR account, such funds shall be applied to the Cities' interest payment obligations set forth in IV(b)(i) above on a first-dollar basis such that the Cities' obligation to pay such interest costs shall only apply to the extent that such aggregate interest costs exceed \$7 Million; provided, however, that the \$7 Million shall be allocated as follows: Following the expenditure of \$6.5 Million toward the Cities' collective interest obligations, Goodyear's obligation to pay interest shall commence according to the formula set forth in IV(b)(i) above. Thereafter, the remaining \$500,000.00 shall be paid against Avondale's and Litchfield Park's collective percentage obligation to pay interest according to the formula set forth in IV(b)(i) above until exhausted. Thereafter, the Cities shall jointly pay interest according to the formula set forth in IV(b)(i) above. If the 2007 Federal Contribution, or any subsequent contribution similarly earmarked for this Project, is received by the State, such funds shall be applied to the Cities' collective interest obligation in the same manner as the first \$6.5 Million outlined above. In the event that the Cities' aggregate interest obligation is less than \$7 Million for the entire Project, the difference between \$7 Million plus the amount of the Federal Reimbursement, if any, and the Cities' actual aggregate interest obligation shall be applied to the portion of the Project to be otherwise funded according to the MAG Acceleration Policy.

f. Avondale, Goodyear and Litchfield Park anticipate that the total annual contribution by each City will not exceed one and a half percent (1.5 %) of such City's total annual operating budget. In the event Litchfield Park's annual contribution amount exceeds the 1.5% amount, Litchfield Park shall pay the amount equal to 1.5% of its then-current annual budget and Avondale and Goodyear shall equally divide the excess and pay such amounts in addition to the amounts due as set forth above.

V. MISCELLANEOUS PROVISIONS

1. This Agreement shall remain in full force and effect until completion of the work contemplated herein and all reimbursements. This Agreement may be cancelled as provided for in this Agreement. Should the Cities fail to fulfill their obligations set forth in this Agreement or withdraw their financial obligation for whatever reason, the Cities shall be responsible for all Project costs incurred by the State up to the time of withdrawal.

2. To the extent permitted by law, each party (as "indemnitor") agrees to indemnify, defend, save and hold harmless the other parties (as "indemnitee") from and against any and all claims, losses, liability, costs, or other expenses (including, but not limited to, reasonable attorneys' fees) (hereinafter collectively referred to as "claims") arising out of bodily injury of any person (including death), property damage and any other claims (including, but not limited to claims of derivative or vicarious liability) which are caused by the act, omission, negligence, misconduct or other fault of the indemnitor, its officers, officials, agents, employees or volunteers.

3. This Agreement shall become effective upon filing with the Secretary of State.

4. This Agreement may be cancelled in accordance with Arizona Revised Statutes Section 38-511.

5. The recitals and definitions set forth above are acknowledged by the Parties to be true and correct and are incorporated herein by this reference.

6. All books, accounts, reports, files and other records of either party relating to the Agreement or the work done under this Agreement shall be subject at all reasonable times to inspection and audit by the other party until five years after the State has repaid all monies in full. Such records shall be available for inspection upon five business days' notice at the offices of the party in possession of the records.

7. This Agreement is subject to all applicable provisions of the Americans with Disabilities Act (Public Law 101-336, 42 U.S.C. 12101-12213) and all applicable federal regulations under the Act, including 28 CFR Parts 35 and 36. The Parties to this Agreement shall comply with Executive Order Number 99-4 issued by the Governor of the State of Arizona and incorporated herein by reference regarding "Non-Discrimination".

8. Non-Availability of Funds: Every payment obligation of the State under this Agreement is predicated upon the availability of funds appropriated or allocated for the payment of such obligation. If funds are not allocated and available for the continuance of this Agreement, this Agreement may be terminated by the State at the end of the period for which the funds are available. No liability shall accrue to the State in the event this provision is exercised, and the State shall not be obligated or liable for any future payments or for any damages as a result of termination under this paragraph.

9. In the event of any controversy, which may arise out of this Agreement, the Parties hereto agree to abide by required arbitration as is set forth for public works contracts in Arizona Revised Statutes Section 12-1518.

10. In the event that any clause, provisions, subsection, Section or Article of the Agreement shall for any reason be determined to be invalid, illegal, or unenforceable in any respect, the Parties hereto shall negotiate such amendments, modification or supplements of or to this Agreement or take such other appropriate actions and shall, to the maximum extent practicable in light of such determination, implement and give effect to the intentions of the Parties as reflected herein and the other provisions of this Agreement shall, as so amended, modified or supplemented, or as otherwise affected by such action, remain in full force and effect.

11. The Cities' obligations hereunder do not and shall not constitute indebtedness or pledge of the general credit of the Cities within the meaning of any constitutional, charter or statutory provision relating to the incurring of indebtedness nor a pledge of the full faith and credit of the Cities. The Cities' obligations hereunder are enforceable, to the extent permitted by law, exclusively from taxes, fees, charges and other monies collected by the State and returned to the Cities for street and highway purposes pursuant to Title 28, Chapter 8, Article 2 of the Arizona Revised Statutes and are subordinate to any bonds issued under Title 48, Chapter 4, Article 5 of the Arizona Revised Statutes. The State shall not have the right to compel the exercise of any taxing power of the Cities to pay any amounts owed hereunder. Notwithstanding the foregoing, the Cities may, but shall not be required, to use any other lawfully available funds to satisfy their obligations.

12. All notices or demands upon any party to this Agreement shall be in writing and shall be delivered in person or sent by mail addressed as follows:

Arizona Department of Transportation
Financial Management Services
206 South 17th Avenue, Mail Drop 200B
Phoenix, AZ 85007
FAX: 602-712-6672

Maricopa Association of Governments
Executive Director
302 North 1st Avenue, Suite 300
Phoenix, AZ 85003
FAX: 602-254-6309

City of Avondale
City Manager
11465 W. Civic Center Drive
Avondale, AZ 85323
FAX: 623-333-0120

City of Goodyear
City Manager
119 North Litchfield Road
Goodyear, AZ 85338
FAX: 623-932-1177

City of Litchfield Park
City Manager
214 W. Wigwam Boulevard
Litchfield Park, AZ 85340
FAX: 623-935-5427

13. Attached hereto and incorporated herein is the written determination of each party's legal counsel that the parties are authorized under the laws of this state to enter into this Agreement and that the Agreement is in proper form.

[SIGNATURES ON FOLLOWING PAGE]

IN WITNESS WHEREOF, the Parties have executed this Agreement the day and year first above written.

STATE OF ARIZONA

Department of Transportation

By: *Victor Mendez*
VICTOR MENDEZ, Director

MARICOPA ASSOCIATION OF GOVERNMENTS

By: *Dennis Smith*
DENNIS SMITH, Executive Director

CITY OF AVONDALE

By: *Marie Lopez Rogers*
MARIE LOPEZ ROGERS, Mayor

CITY OF GOODYEAR

By: *James Cavanaugh*
JAMES CAVANAUGH, Mayor

ATTEST:

Linda M. Farris
LINDA M. FARRIS, City Clerk

ATTEST:

Dee Cockrum
DEE COCKRUM, City Clerk

CITY OF LITCHFIELD PARK

By: *Thomas L. Schoaf*
THOMAS L. SCHOAF, Mayor

ATTEST:

Mary Rose Evans
MARY ROSE EVANS, City Clerk



EXHIBIT A
ACCELERATED CONSTRUCTION SCHEDULE

ELEMENT ONE

<u>EVENT</u>	<u>DATE</u>
(1) AGREEMENT APPROVAL	SEPTEMBER 2007
(2) DESIGN COMPLETED	JUNE 2007
(3) PROJECT ADVERTISED	OCTOBER 2007
(4) PROJECT BID OPEN	DECEMBER 2007
(5) PROJECT AWARDED	DECEMBER 2007
(6) CONSTRUCTION STARTS	JANUARY/FEBRUARY 2008
(7) COMPLETION	MID 2009

ELEMENT TWO

(1) DESIGN COMPLETED	FALL 2008
(2) PROJECT ADVERTISED	TBD 2009
(3) PROJECT BID OPEN	TBD 2009
(4) PROJECT AWARDED	TBD 2009
(5) CONSTRUCTION STARTS	TBD 2009
(6) COMPLETION	TBD 2010



302 North 1st Avenue, Suite 300 ▲ Phoenix, Arizona 85003
Phone (602) 254-6300 ▲ FAX (602) 254-6490
E-mail: mag@mag.maricopa.gov ▲ Web site: www.mag.maricopa.gov

September 10, 2007

Mr. Joe Lane, Chairman
State Transportation Board
Arizona Department of Transportation
206 South 17th Avenue, MD 100A
Phoenix, Arizona 85007

Dear Chairman Lane and Board Members:

On September 6, 2007, the Maricopa Association of Governments (MAG) Regional Council approved funding for interest reimbursement from the Statewide Transportation Acceleration Needs Account; Reimbursement of Interest Costs (HB 2793), that was passed in the 2007 session of the Arizona Legislature. The Regional Council approval is being forwarded to the State Transportation Board for consideration.

The Regional Council approved allocating the \$10 million in the Statewide Transportation Acceleration Needs Subaccount for interest reimbursement for the I-10 widening project, with 70 percent (\$7 million) allocated to the participating cities and 30 percent (\$3 million) to the Regional Freeway Program. The Regional Council also approved forwarding this approval to the State Transportation Board for consideration and to authorize the MAG Executive Director to enter into an agreement with ADOT and the participating cities for the project to be eligible for reimbursement.

We appreciate the consideration of the State Transportation Board members regarding the action taken by the Regional Council. If you have any questions please contact Dennis Smith, MAG Executive Director, or Eric Anderson, MAG Transportation Director, at the MAG Office.

Sincerely,

James M. Cavanaugh
Chair, MAG Regional Council
Mayor of Goodyear

cc: MAG Regional Council

Statewide Transportation Acceleration Needs Account Request for Project Funding

Requesting Entity: Maricopa Association of Governments

Project Name: I-10 West Widening – Interest Reimbursement

Included In: ☒ Regional Transportation Plan
(Check one) ☐ Statewide Long-Range Transportation Plan
(Note – a copy of the plan showing this project must be attached)

Programmed Cost: \$24.2 total estimated interest expense. Request \$10 million from the STAN interest subaccount, with up to \$7.0 million for reimbursement to the sponsoring jurisdictions and the balance to the Regional Freeway Program for the interest expenses related to the financing of I-10 widening from L101 to Sarival Road.

Current Estimated Cost: \$24.2 total estimated interest expense. Request \$10 million from the STAN interest subaccount, with up to \$7.0 million for reimbursement to the sponsoring jurisdictions and the balance to the Regional Freeway Program for the interest expenses related to the financing of I-10 widening from L101 to Sarival Road.

Requestor Certifications

Section 9 (H):

To the best of your knowledge and belief, are all project costs eligible for STAN funding? (yes/no) Yes

If NO:

Type of Cost _____

Estimated Amount _____

Entity Responsible for These Costs _____

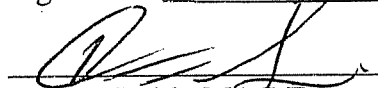
Section 9 (K):

Are requested STAN funds supplanting any other funding (yes/no) No

Section 9 (M): (For Regional Planning Agencies Only)

Will you submit required annual reports (yes/no) Yes

Signed this 10th day of September, 2007



Dennis Smith, MAG Executive Director

Statewide Transportation Acceleration Needs Account Request for Project Funding

Board Certifications and Determinations

The State Transportation Board has reviewed the above request and certifications and has determined the following:

Section 9 (E):

The above-named project meets the criteria of this section.

Section 9 (F):

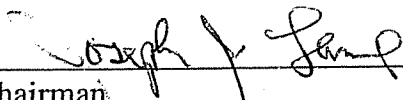
To the best of our knowledge and belief, all costs associated with the above-named project meet the criteria of this section. We further have determined that "Other directly related costs approved by the board" shall include all direct costs normally and generally included in projects involving the construction or reconstruction of freeways, state highways, bridges and interchanges.

Section 9 (I):

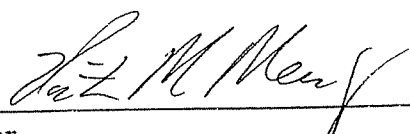
The State Transportation Board hereby:

- ☐ Approves This Request for STAN Funding
- ☐ Requires the Following Modifications to This Request

Signed this 28 day of September, 2007



Chairman
State Transportation Board

Attest: 

Director
Arizona Department of Transportation

RESOLUTION NO. 2685-907

A RESOLUTION OF THE COUNCIL OF THE CITY OF AVONDALE, ARIZONA, REPEALING RESOLUTION 2682-907 AND APPROVING AN ACCELERATION AGREEMENT WITH THE STATE OF ARIZONA, THE MARICOPA ASSOCIATION OF GOVERNMENTS AND THE CITIES OF GOODYEAR AND LITCHFIELD PARK RELATING TO ACCELERATION OF IMPROVEMENTS TO INTERSTATE 10 FROM LOOP 101 TO SARIVAL AVENUE.

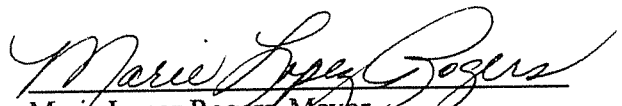
BE IT RESOLVED BY THE COUNCIL OF THE CITY OF AVONDALE as follows:

SECTION 1. That Resolution 2682-907 is hereby repealed.

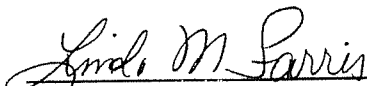
SECTION 2. That the Acceleration Agreement with State of Arizona, the Maricopa Association of Governments and the Cities of Goodyear and Litchfield Park regarding the acceleration of improvements to Interstate 10 from Loop 101 to Sarival Avenue (the "Agreement") is hereby approved in the form attached hereto as Exhibit A.

SECTION 3. That the Mayor, the City Manager, the City Clerk and the City Attorney are hereby authorized and directed to take all steps necessary to cause the execution of the Agreement and to take all steps necessary to carry out the purpose and intent of this Resolution.

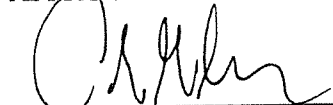
PASSED AND ADOPTED by the Council of the City of Avondale, September 27, 2007.


Marie Lopez Rogers, Mayor

ATTEST:


Linda M. Farris, City Clerk

APPROVED AS TO FORM:


Andrew J. McGuire, City Attorney

RESOLUTION NO. 07-1182

A RESOLUTION OF THE MAYOR AND COUNCIL OF THE CITY OF GOODYEAR, MARICOPA COUNTY, ARIZONA, AUTHORIZING THE MAYOR OF GOODYEAR TO EXECUTE AN INTERGOVERNMENTAL AGREEMENT WITH THE CITY OF AVONDALE, THE CITY OF LITCHFIELD PARK, THE ARIZONA DEPARTMENT OF TRANSPORTATION (ADOT), AND THE MARICOPA ASSOCIATION OF GOVERNMENTS (MAG) FOR THE ACCELERATION OF IMPROVEMENTS TO INTERSTATE-10 FROM THE LOOP 101 TO SARIVAL AVENUE.

WHEREAS, the safety of residents and neighboring citizens, and all who travel through the I-10 corridor west of Phoenix, is being compromised due to the undersized condition of I-10, a major federal highway that carries a high volume of commuters, travelers and transcontinental commerce and impacts the Cities of Avondale, Goodyear and Litchfield Park; and,

WHEREAS, the current regional freeway system does not and cannot support the existing and projected growth in the southwest valley; and,

WHEREAS, Avondale, Goodyear and Litchfield Park desire to mitigate the congestion and dangerous conditions along I-10 west between Loop 101 and Sarival Avenue; and,

WHEREAS, on April 26, 2006, the Maricopa Association of Governments ("MAG") Regional Council approved a proposal to accelerate the widening of I-10 to five lanes in each direction from Loop 101 to the vicinity of Sarival Avenue in the West Valley and include this Project in the draft FY 2007 to FY 2011 Transportation Improvement Program and for the purpose of air quality conformity analysis; and,

WHEREAS, the MAG acceleration policy provides that alternative sources of financing may be provided to accelerate highway projects, including cities paying the interest costs associated with the financing necessary to complete design and construction from the date such costs are incurred until the time at which the project would have been funded pursuant to the MAG Regional Transportation Plan; and,

WHEREAS, in order to accelerate the Project from the respective currently-scheduled dates to the 2007-2011 MAG TIP, the Federal Highway Administration regulations require that local jurisdictions commit local funds; and,

WHEREAS, on April 4, 2006, the City/Town Councils from Avondale, Buckeye, Goodyear and Litchfield Park each adopted a Resolution establishing a commitment to develop an IGA for consideration by their respective City Councils that would establish the sources of revenue and the terms and conditions of the agreement; and,

WHEREAS, on August 28, 2006, the Goodyear City Council adopted an intergovernmental agreement between the Cities of Avondale, Goodyear and Litchfield Park to jointly share in the interest costs associated with accelerating the design of widening I-10 from the Loop 101 to Sarival Avenue (the "Design IGA"). The Design IGA was subsequently adopted by the Litchfield Park City Council on September 6, 2006 and by the Avondale City

Council on September 25, 2006. The Town of Buckeye did not participate in the Design IGA; and,

WHEREAS, the Cities desire to advance the construction of the Project, to begin construction in or around January/February 2008 and be completed in accordance with the schedule planned; and,

WHEREAS, the State, MAG and the Cities agree it is in the best interest of the public to advance the construction of the Project; and,

WHEREAS, MAG has established a process for review and approval of interest cost reimbursement from STAN, and approved up to \$7 Million as eligible for interest cost reimbursement, to be credited against the Cities' obligation to pay interest to the State as set forth in the attached agreement;

WHEREAS, the pursuant to the attached agreement the Cities agree that \$6.5 Million of the STAN funds shall be allocated to the Cities based roughly on lane mileage as follow: Goodyear 58.5%, Avondale 38.5% and Litchfield Park 3% with the remaining MAG approved STAN funds allocated to Litchfield Park and Avondale;

NOW THEREFORE, be it resolved by the Mayor and Council of the City of Goodyear, Arizona, that the Mayor of Goodyear is hereby authorized to sign the Intergovernmental Agreement between the City of Goodyear, the City of Avondale, the City of Litchfield Park, the Arizona Department of Transportation, and the Maricopa Association of Governments that is substantially in compliance with the attached draft IGA.

Passed, approved and adopted by the Mayor and Council of the City of Goodyear, Maricopa County, Arizona this 27 day of September, 2007.



James M. Cavanaugh, Mayor

Robert Antoniuk, Acting Mayor

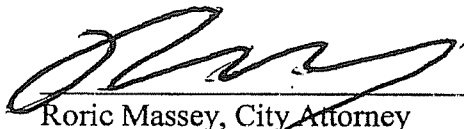
ATTEST:



Dee Cockrum, City Clerk



APPROVED AS TO FORM:



Roric Massey, City Attorney

CERTIFICATION

STATE OF ARIZONA

)
) ss.

County of Maricopa)

I, the undersigned, Dee Cockrum, being the duly appointed, qualified and acting City Clerk of the City of Goodyear, Maricopa County, Arizona, certify that the above and foregoing Resolution No. 07-1182 was duly passed by the City Council of the City of Goodyear, Arizona at a regular meeting held on September 27, 2007 and that the vote was 6 aye's and 0 nay's and that the Mayor and 5 Council Members were present thereat.

Dated: September 27, 2007



Dee Cockrum
City Clerk

**CITY OF LITCHFIELD PARK
RESOLUTION 07-261**

A RESOLUTION OF THE MAYOR AND COUNCIL OF THE CITY OF LITCHFIELD PARK, MARICOPA COUNTY, ARIZONA, AUTHORIZING THE MAYOR OF LITCHFIELD PARK TO EXECUTE AN INTERGOVERNMENTAL AGREEMENT WITH THE CITY OF AVONDALE, THE CITY OF GOODYEAR, THE ARIZONA DEPARTMENT OF TRANSPORTATION (ADOT), AND THE MARICOPA ASSOCIATION OF GOVERNMENTS (MAG) FOR THE ACCELERATION OF IMPROVEMENTS TO INTERSTATE-10 FROM THE LOOP 101 TO SARIVAL AVENUE.

WHEREAS, the safety of residents and neighboring citizens, and all who travel through the I-10 corridor west of Phoenix, is being compromised due to the undersized condition of I-10, a major federal highway that carries a high volume of commuters, travelers and transcontinental commerce and impacts the Cities of Avondale, Goodyear and Litchfield Park;

WHEREAS, the current regional freeway system does not and cannot support the existing and projected growth in the southwest valley;

WHEREAS, Avondale, Goodyear and Litchfield Park desire to mitigate the congestion and dangerous conditions along I-10 west between Loop 101 and Sarival Avenue;

WHEREAS, on April 26, 2006, the Maricopa Association of Governments ("MAG") Regional Council approved a proposal to accelerate the widening of I-10 to five lanes in each direction from Loop 101 to the vicinity of Sarival Avenue in the West Valley and include this Project in the draft FY 2007 to FY 2011 Transportation Improvement Program and for the purpose of air quality conformity analysis;

WHEREAS, the MAG acceleration policy provides that alternative sources of financing may be provided to accelerate highway projects, including cities paying the interest costs associated with the financing necessary to complete design and construction from the date such costs are incurred until the time at which the project would have been funded pursuant to the MAG Regional Transportation Plan;

WHEREAS, in order to accelerate the Project from the respective currently-scheduled dates to the 2007-2011 MAG TIP, the Federal Highway Administration regulations require that local jurisdictions commit local funds;

WHEREAS, on April 4, 2006, the City/Town Councils from Avondale, Buckeye, Goodyear and Litchfield Park each adopted a Resolution committing to work with each

other and to cause their respective staff members to prepare for consideration by their respective City Councils an intergovernmental agreement that would establish the sources of revenue and the terms and conditions by which each City/Town would pay a portion of the acceleration costs of the project;

WHEREAS, on August 28, 2006, the Goodyear City Council adopted an intergovernmental agreement among the Cities of Avondale, Goodyear and Litchfield Park to jointly share in the interest costs associated with accelerating the design of widening I-10 from the Loop 101 to Sarival Avenue (the "Design IGA"). The Design IGA was subsequently adopted by the Litchfield Park City Council on September 6, 2006 and by the Avondale City Council on September 25, 2006. The Town of Buckeye did not participate in the Design IGA;

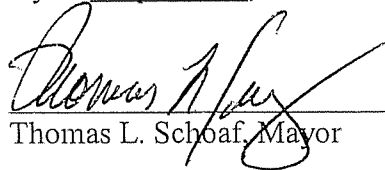
WHEREAS, the Cities desire to advance the construction of the Project, to begin construction in or around January 2008 and be completed in accordance with the schedule planned;

WHEREAS, the State, MAG and the Cities agree it is in the best interest of the public to advance the construction of the Project; and,

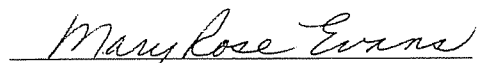
WHEREAS, MAG has established a process for review and approval of interest cost reimbursement from STAN, and at the August 22, 2007 meeting of the MAG Regional Council the Project was approved as eligible for interest cost reimbursement in the amount of \$6 million, to be credited against the Cities' obligation to pay interest to the State as set forth in the attached agreement.

NOW THEREFORE, be it resolved by the Mayor and Council of the City of Litchfield Park, Arizona, that the Mayor of Litchfield Park is hereby authorized to sign the Intergovernmental Agreement between the City of Goodyear, the City of Avondale, the City of Litchfield Park, the Arizona Department of Transportation, and the Maricopa Association of Governments.

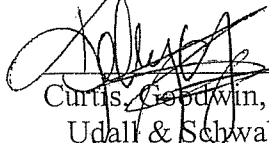
Passed, approved and adopted by the Mayor and Council of the City of Litchfield Park, Maricopa County, Arizona this 27th day of September, 2007.


Thomas L. Schoaf, Mayor

ATTEST:


Mary Rose Evans, MMC, City Clerk

APPROVED AS TO FORM:


Curtis, Goodwin, Sullivan,
Udall & Schwab, PLC, City Attorneys
By Susan D. Goodwin


CERTIFICATION

STATE OF ARIZONA)
) ss.
County of Maricopa)

I, the undersigned, Mary Rose Evans, being the duly appointed, qualified and acting City Clerk of the City of Litchfield Park, Maricopa County, Arizona, certify that the above and foregoing Resolution No. 07- 261 was duly passed by the City Council of the City of Litchfield Park, Arizona at a regular meeting held on September, 27th, 2007 and that the vote was 7 ayes and 0 nays and that the Mayor and 6 Councilmembers were present thereat.

Dated: Sept., 27, 2007


City Clerk

TERRY GODDARD Attorney General	 OFFICE OF THE ATTORNEY GENERAL STATE OF ARIZONA	CIVIL DIVISION TRANSPORTATION SECTION Direct Line: 602.542.8837
-----------------------------------	---	---

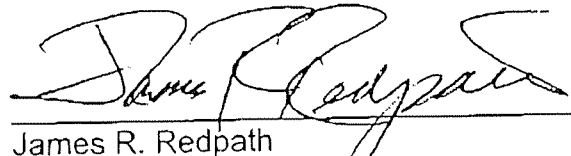
INTERGOVERNMENTAL AGREEMENT
DETERMINATION

A.G. Contract No. KR07-0383TRN (**JPA 06-109**), an agreement between public agencies, has been reviewed pursuant to A.R.S. § 11-952, as amended, by the undersigned Assistant Attorney General who has determined that it is in the proper form and is within the powers and authority granted to the State of Arizona.

No opinion is expressed as to the authority of the remaining parties, other than the State or its agencies, to enter into said agreement.

Date: 16 October 2007

Terry Goddard
ATTORNEY GENERAL



James R. Redpath
Assistant Attorney General
Transportation Section

JRR:djd:88872